IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 98 of 2007.

Date of Decision: 20th July, 2007.

Gian Chand …… **Petitioner**

Versus

Davesh Sharma ……**Respondent.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ramakant Sharma, Advocate.

For the Respondents: Mr. Bhuvnesh Sharma, Advocate.

Dev Darshan Sud, Judge.

This is the tenant's revision against the judgment and order of the learned Rent Controller affirmed by the learned Appellate Authority in a petition under Section 14 (3) (a) (i) of the Himachal Pradesh Urban Rent Control Act (hereinafter referred to as the Act). Respondent-landlord instituted proceedings under the Act on the ground that the premises are required bonafide for the purpose of reconstruction and rebuilding which cannot be carried out without vacation of the premises. It was alleged that the premises are old and constructed about 60 years back. The petition was resisted by the tenant on a number of

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

grounds including the ground of non-joinder of necessary parties. Learned Rent Controller, after a detailed consideration of the evidence, proved on record that the building is around 70 to 75 years old and is in a dilapidated condition and needs rebuilding, which cannot be carried out without its vacation. It was stated that plans had been submitted to the Municipal Corporation, Shimla for approval. Landlord submitted that the other tenants had undertaken to vacate the building once the plans were approved and it is only the petitioner who was resisting the vacation. The learned Rent Controller as a fact found that the petition had been actuated by malafidies and that petitioner was possessed of sufficient funds for rebuilding. Learned Rent Controller has relied upon the judgment of Hon'ble Supreme Court in **Jagat Pal Dhawan vs. Kahan Sisngh Latest 2003 (1) SCC 191** in which it has been held that for the purpose of building or rebuilding or ranted land being vacated, the age and condition of the building is not an essential ingredient. It is also not necessary that the availability of requisite funds and duly sanctioned plans by the Local authority could be established on the record as a condition precedent for obtaining an eviction order. The court may look into these as relevant facts though not specifically mentioned as necessary ingredients for eviction.

In appeal a number of grounds were urged by the tenant which were considered by the learned Appellate Authority who noticed that the building plans had been returned to the appellant with some objections. During the course of arguments, it has been submitted by the learned counsel for the landlord that the plans had already been sanctioned by the Municipal Corporation. In order to protect the interest of the tenant, the learned Appellate Authority, following the decision of the

Hon'ble Supreme Court in **Harrington House School vs. S.M. Ishahani and another AIR 2002 SC 2268** ordered that eviction order would be executed only if the plans were sanctioned by the Municipal Corporation.

On the question of financial capability of the petitioner, learned Appellate Authority held that the business which the land lord was carrying on, which fact was admitted by the tenant in cross-examination was of such a nature that the funds were easily available for the petitioner for such rebuilding. It was admitted that the land lord had 3-4 trucks and a stone crusher which were providing sufficient means of income. Another point urged for the consideration of the learned Appellate Authority was that the statement of the landlord is not corroborated or supported by the opinion of an expert. The evidence of the respondent-tenant was considered and the categorical admission made by him to the effect that the building cannot be reconstructed without being demolished, was held sufficient by the learned Appellate Authority

I have heard learned counsel for the parties and have gone through the judgments of both the courts below. Learned counsel for the petitioner-tenant has placed reliance on **Amro Devi vs. Ajay Kumar Sood 1994 (2) RCR 178** in order to support his contention that without the pleading and proof, premises could not be rebuilt without vacation, requires to be dismissed. He also relied upon on **M/s K.A.M.A.K. Nataraja Nadar and sons and others vs. R. Kannan 2005 (2) RCR 605** and **Iqbal Abdul Kareem vs. Chandrasekaran (2005) 2 RCR 653** holding that for demolition and reconstruction, landlord cannot be granted order of eviction unless it is proved that the entire building is to be demolished and that it is incumbent upon the landlord to prove the age of

the building, his financial status for rebuilding. He fortifies his submission from the decision of the Hon'ble Supreme Court in **Vijay Singh and others vs. Vijayalakshmi Ammal (1996) 6 SCC 475** holding that an order for eviction cannot be granted on the mere asking of the landlord and he must prove his bonafide intention and the petition should not be filed with the purpose of getting rid of tenants. Age of building, condition of the building and financial position of the landlord have to be proved.

After a perusal of the material on the record, I find that the submissions made by the tenant cannot be sustained. Both the courts have already noticed that so far as the bonafidies of the petitioner are concerned, on a consideration of the entire evidence and on the basis of admissions made by the tenant, have held that the landlord is not actuated by mere whim or desire for obtaining an order of eviction. The building plans had been submitted to the Municipal Corporation they were returned to the landlord with some objections the learned Appellate Authority has noticed that they have been sanctioned during the pendency of the appeal. The financial position of the landlord is not such which would make it impossible for him to undertake the construction work but his business and financial status is of such a nature which would provide sufficient funds for this purpose. This position was admitted by the tenant in his cross-examination. On the question of the construction and reconstruction being carried out without vacation of the premises, learned courts below concluded that the fact had been established by the admission of the tenant. In these circumstances, the facts pleaded have been established on admission having been made by the tenant which have

not been explained away. He cannot make a grievance that the necessary facts/ingredients have not been established on the record. Under Section 17 of the Evidence Act admission is best proof of fact unless it is explained away. See: **Ramji Dayawala & Sons (P) Ltd. vs. Invest Import AIR 1981 SC 2085.**

Learned counsel for the respondents/landlords has urged that the interest of the petitioner is protected inasmuch as the premises cannot be got vacated unless plan is sanctioned.

I do not find any force in the submissions made by the learned counsel for the petitioner more especially when the necessary facts/ingredients have been established on the record of the case and more especially when the tenant himself admits the requirements of the landlord. As a Revisional Court it would not be open for me to reappreciate the entire evidence afresh, unless perversity is established or a conclusion without any evidence on record is brought to the notice of this Court which is not the case in this petition.

In the facts and circumstances of the case, I find no merit in this revision which is accordingly dismissed. There shall be no order as to costs.

20th July, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**